

FCC MAIL SECTION

Federal Communications Commission

DA 96-1540

SEP 24 10 50 AM '96

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 96-196
Table of Allotments,)	RM-8878
FM Broadcast Stations.)	
(Georgetown and Garden City,)	
South Carolina))	

NOTICE OF PROPOSED RULE MAKING

Adopted: September 13, 1996;

Released: September 20, 1996

Comment Date: November 12, 1996

Reply Comment Date: November 27, 1996

By the Acting Chief, Allocations Branch:

1. The Commission has before it the petition for rule making filed by Coastline Communications of Carolina, Inc. ("petitioner"), licensee of Station WWXM(FM), Channel 249C1, Georgetown South Carolina, proposing the reallocation of Channel 249C1 from Georgetown to Garden City, South Carolina, and the modification of Station WWXM(FM)'s license accordingly. Petitioner states its intention to apply for the channel, if reallocated to Garden City.

2. Petitioner seeks to invoke the provisions set forth in Section 1.420(i) of the Commission's Rules, which permit the modification of a station's license to specify a new community of license without affording other interested parties an opportunity to file competing expressions of interest. See Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License, 4 FCC Rcd 4870 (1989), recon. granted in part, 5 FCC Rcd 7094 (1990). In support of its proposal, petitioner states that Garden City is unincorporated and has a population of 6,305.¹ Although it is governed by and receives all of its local services from Horry County (population 144,053), petitioner claims that Garden City's population is larger than surrounding unincorporated cities that have their own local services. Petitioner further claims that Garden City, as a beach area, has needs and interests different from those of the agricultural portions of the county and the highly commercial

¹All population figures are taken from the 1990 U.S. Census.

development of the northern Myrtle Beach areas, and is deserving of a local aural transmission service.

3. Section 307(b) of the Communications Act of 1934, as amended, mandates that the Commission fairly, equitably, and efficiently distribute frequencies "... among the several States and communities." The Commission has defined "communities" as geographically identifiable population groupings. Generally, if a community is incorporated or is listed in the U.S. Census, that is sufficient to demonstrate its status. Absent such recognizable community factors, the petitioner must present the Commission with sufficient information to demonstrate that such a place has social, economic, cultural, or governmental indicia to qualify it as a "community" for allotment purposes. See, e.g., Oak Grove, Florida, 5 FCC Rcd 3774 (1990); Hannibal, Ohio, 5 FCC Rcd 3315 (1990); and Statenville, Georgia, 5 FCC Rcd 2685 (1990). According to the 1990 U.S. Census, Garden City is attributed with a population of 6,305, and is listed therein as a Census Designated Place. While the Census listing raises a presumption of "community" status, it is not absolute for allotment purposes where the community may be devoid of the customary factors associated with determining "community" status such as shopping centers, a newspaper, and social or civic organizations. See East Hemet, California, et al., 4 FCC Rcd 7895 (1989); Searles Valley, California, 3 FCC Rcd 5221 (1988); and Naples Florida, 41 RR 2d 1549 (1977). In the past, we have rejected claims of "community" status where a nexus has not been demonstrated between the political, social and commercial organizations and the community in question. See Gretna, et al, Florida, 6 FCC Rcd 633 (1991), and cases cited therein. Therefore, petitioner is requested to provide specific information to demonstrate whether Garden City has any commercial, social, economic, cultural, or religious organizations, municipal services, or governmental units that identify themselves specifically with that locality.

4. We recognize that neither Georgetown nor Garden City is located within an urbanized area. However, an engineering analysis has revealed that Garden City is located 2 kilometers (1.2 miles) from the Myrtle Beach Urbanized Area, and that Station WWXM(FM) presently provides a 70 dBu signal over the entire Myrtle Beach Urbanized Area. Since Station WWXM(FM) would continue to provide the entire Myrtle Beach Urbanized Area with a 70 dBu signal, we do not believe that the proponent should be required to submit a Tuck analysis to show that Garden City is sufficiently independent of Myrtle Beach to merit a first local service preference.² This is due to the fact that Station WWXM(FM) is not "moving into" the Myrtle Beach Urbanized Area but is already there. See Boulder and Lafayette, Colorado, 11 FCC Rcd 3632 (1996); and East Los Angeles, et al., California, 10 FCC Rcd 2864 (1995). Moreover, our engineering analysis has also determined that since Station WWXM(FM) does not seek to relocate its transmitter site, the reallocation will not result in any gain or loss areas, and the station will continue to provide Georgetown (population 9,517) with city grade 70 dBu coverage.

²See also Huntington Broadcasting Co. v. FCC, 192 F.2d 33 (D.C. Cir. 1951); RKO General, Inc., 5 FCC Rcd 3222 (1990), and Faye and Richard Tuck, 3 FCC Rcd 5374 (1988). See also Headland, Alabama and Chattahoochee, Florida, 10 FCC Rcd 10352 (1995).

5. Based on the information before us, we believe the proposal warrants consideration since the reallocation of Channel 249C1 to Garden City, South Carolina, could provide the community with its first local aural transmission service, without depriving Georgetown of its sole local aural service,³ in the event Garden City is ultimately found to qualify as a "community" for allotment purposes. An engineering analysis has determined that Channel 249C1 can be allotted to Garden City in compliance with the Commission's minimum distance separation requirements with a site restriction of 3 kilometers (1.9 miles) northwest at petitioner's licensed site.⁴ In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 249C1 at Garden City, South Carolina.

6. Accordingly, we seek comments on the proposed amendment of the FM Table of Allotments, Section 73.202(b) of the Commission's Rules, for the communities listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>	
	<u>Present</u>	<u>Proposed</u>
Georgetown, South Carolina	229A, 249C1, 293C2	229A, 293C2
Garden City, South Carolina	—	249C1

7. The Commission's authority to institute rule making proceedings, showings required, cut-off procedures, and filing requirements are contained in the attached Appendix and are incorporated by reference herein. In particular, we note that a showing of continuing interest is required by paragraph 2 of the Appendix before a channel will be allotted.

8. Interested parties may file comments on or before November 12, 1996, and reply comments on or before November 27, 1996, and are advised to read the Appendix for the proper procedures. Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554. Additionally, a copy of such comments should be served on the petitioner, or its counsel or consultant, as follows:

Edward W. Hummers, Jr.
Holland & Knight
2100 Pennsylvania Ave., N.W.
Suite 400

³Stations WSYN(FM), WSCA(FM), WGTV(AM) and WLWC(AM) (daytime-only) will remain licensed to Georgetown.

⁴The coordinates for Channel 249C1 at Garden City are North Latitude 33-35-27 and West Longitude 79-02-53.

Washington, D.C. 20037-3202
(Counsel for Petitioner)

9. The Commission has determined that the relevant provisions of the Regulatory Flexibility Act of 1980 do not apply to rule making proceedings to amend the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. See Certification That Sections 603 and 604 of the Regulatory Flexibility Act Do Not Apply to Rule Making to Amend Sections 73.202(b), 73.504 and 73.606(b) of the Commission's Rules, 46 FR 11549, February 9, 1981.

10. For further information concerning this proceeding, contact Sharon P. McDonald, Mass Media Bureau, (202) 418-2180. For purposes of this restricted notice and comment rule making proceeding, members of the public are advised that no ex parte presentations are permitted from the time the Commission adopts a Notice of Proposed Rule Making until the proceeding has been decided and such decision is no longer subject to reconsideration by the Commission or review by any court. An ex parte presentation is not prohibited if specifically requested by the Commission or staff for the clarification or adduction of evidence or resolution of issues in the proceeding. However, any new written information elicited from such a request or a summary of any new oral information shall be served by the person making the presentation upon the other parties to the proceeding unless the Commission specifically waives this service requirement. Any comment which has not been served on the petitioner constitutes an ex parte presentation and shall not be considered in the proceeding. Any reply comment which has not been served on the person(s) who filed the comment, to which the reply is directed, constitutes an ex parte presentation and shall not be considered in the proceeding.

FEDERAL COMMUNICATIONS COMMISSION

Andrew J. Rhodes
Acting Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

Attachment: Appendix

APPENDIX

MM Docket No. 96-196
RM-8878

1. Pursuant to authority found in Sections 4(i), 5(c)(1), 303(g) and (r), and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS PROPOSED TO AMEND the FM Table of Allotments, Section 73.202(b) of the Commission's Rules and Regulations, as set forth in the Notice of Proposed Rule Making to which this Appendix is attached.

2. Showings Required. Comments are invited on the proposal(s) discussed in the Notice of Proposed Rule Making to which this Appendix is attached. Proponent(s) will be expected to answer whatever questions are presented in initial comments. The proponent of a proposed allotment is also expected to file comments even if it only resubmits or incorporates by reference its former pleadings. It should also restate its present intention to apply for the channel if it is allotted and, if authorized, to build a station promptly. Failure to file may lead to denial of the request.

3. Cut-off protection. The following procedures will govern the consideration of filings in this proceeding.

(a) Counterproposals advanced in this proceeding itself will be considered, if advanced in initial comments, so that parties may comment on them in reply comments. They will not be considered if advanced in reply comments. (See Section 1.420(d) of the Commission's Rules).

(b) With respect to petitions for rule making which conflict with the proposals in this Notice, they will be considered as comments in the proceeding, and Public Notice to this effect will be given as long as they are filed before the date for filing initial comments herein. If they are filed later than that, they will not be considered in connection with the decision in this docket.

(c) The filing of a counterproposal may lead the Commission to allot a different channel than was requested for any of the communities involved.

4. Comments and Reply Comments; Service. Pursuant to applicable procedures set out in Sections 1.415 and 1.420 of the Commission's Rules and Regulations, interested parties may file comments and reply comments on or before the dates set forth in the Notice of Proposed Rule Making to which this Appendix is attached. All submissions by parties to this proceeding or by persons acting on behalf of such parties must be made in written comments, reply comments, or other appropriate pleadings. Comments shall be served on the petitioner by the person filing the comments. Reply comments shall be served on the person(s) who filed comments to which the reply is directed. Such comments and reply comments shall be accompanied by a certificate of service. (See Section 1.420(a), (b) and (c) of the Commission's

Rules.) Comments should be filed with the Secretary, Federal Communications Commission, Washington, D.C. 20554.

5. Number of Copies. In accordance with the provisions of Section 1.420 of the Commission's Rules and Regulations, an original and four copies of all comments, reply comments, pleadings, briefs, or other documents shall be furnished the Commission.

6. Public Inspection of Filings. All filings made in this proceeding will be available for examination by interested parties during regular business hours in the Commission's Reference Center (Room 239) at its headquarters, 1919 M Street, N.W., Washington, D.C.